

Appl. No. : 10/629,409
Filed : July 29, 2003

REMARKS

In the Office Action mailed February 24, 2006, the Examiner objected to the Specification, objected to certain terminology in the claims and further rejected certain ones of the claims under 35 U.S.C. § 112, second paragraph. In the Office Action, the Examiner also rejected Claims 1-30 under either 35 U.S.C. § 102(b) or 35 U.S.C. § 103 as being anticipated by the Sitnik reference (U.S. Patent No. 4,870,962), the Michielsen reference (U.S. Patent No. 3,575,167) or some combination thereof. By this paper, the Applicant is amending the specification and the claims of the application to address the objections noted by the Examiner and has further amended independent Claims 1, 12 and 22 to highlight the subject matter which the Applicant believes is allowable over the art of record. Hence, reconsideration of the above-captioned application in light of the amendments and remarks contained herein is now respectfully requested.

In the Office Action, the Examiner asked that we affirm the election made on Wednesday, February 15, 2006, and by this paper the Applicant hereby affirms the election of Claims 1-30 without traverse. In the Office Action, the Examiner also objected to the use of the term Velcro in the specification. As is understood by persons of ordinary skill in the art, the trademark Velcro is often used in the descriptive sense to refer to hook and loop fasteners and the Applicant is hereby amending the specification to replace the trademark Velcro with the hook and loop fastener term. In the Office Action, the Examiner also objected to the use of the word "their" as indefinite in reference to user's hands or body and by this paper the Applicant has amended the claims to replace the word "their" with the term "the user's." Further, the Applicant has also amended the claims to replace instances of the term "Velcro" with the term "hook and loop fastener." Hence, the Applicant believes that the specification and claims comply with the requirements of 35 U.S.C. § 112, second paragraph.

In the Office Action, the Examiner also rejected Claims 1-30 either as being anticipated by Sitnik under 35 U.S.C. § 102 or obvious in view of Sitnik and Michielsen under 35 U.S.C. § 103. After carefully reviewing Sitnik and Michielsen, the Applicant notes that neither of these references, either by themselves or in combination, disclose the concept of "a system that has a harness that is sized to be worn by a user that is also attached to a bellows wherein the harness maintains the bellows adjacent the user's body in proximity to the user's armpit." (*See, e.g.*

Appl. No. : 10/629,409
Filed : July 29, 2003

Claim 1 as amended.) In fact, Sitnik discloses a bellows-type structure but there is no disclosure or even any suggestion of mounting this particular bellows to a harness that would maintain the bellows in this particular position with respect to the user. Further, while Michielsen does disclose a harness with a bellows-type structure, the bellows-type structure in Michielsen is mounted so as to be positioned adjacent the person's groin (*See*, Michielsen, Figure 3). Hence, combining Michielsen and Sitnik simply results in a harness that maintains a bellows adjacent the user's groin which thereby requires the user to use their hands to compress the bellows as opposed to interposing the bellows between their upper torso and upper arm adjacent the armpit. Thus, even if there is a suggestion in the art to combine Sitnik and Michielsen, the resulting combination does not disclose nor teach the invention as defined by Claim 1.

Moreover, the Applicant notes that while it may be possible to modify Michielsen to change the location of the bellows "the fact that a prior art device could be modified so as to produce the claimed device is not a basis for an obviousness-type rejection unless the prior art suggests the desirability of such a modification." *In re Gordon*, 221 USPQ 1125 (Fed Cir 1984). In this case, there is nothing in either Michielsen or Sitnik that would suggest the desirability of modifying the harness so as to position the bellows underneath the person's armpit so as to allow hands-free operation of the bellows to thereby enable the user to more firmly position the mouthpiece or face piece over the patient's face. In fact, both Sitnik and Michielsen expressly contemplate the user depressing the bellows with one of their hands. *See, e.g.*, Michielsen Figure 4 and Sitnik, column 1, lines 54-63. Hence, both of the references cited by the Examiner expressly teach away from the concept of having the harness coupled to the bellows in such a fashion that the bellows is positioned underneath the user's armpit or in proximity to the user's upper arm and torso. As such, the Applicant submits that Claim 1 as amended is allowable over the art of record.

The Applicant also submits that Claims 12 and 22 are also allowable over the art of record for similar reasons in that the harness is positioning the bellows such that the bellows can be compressed between the arm and torso of the operator when the operator is wearing the harness. Moreover, with respect to Claim 22, there is no teaching in either Sitnik or Michielsen or any combination thereof of the desirability of having a harness that was attached to two separate bellows which allow the bellows to be positioned under both of the arms of the operator.

Appl. No. : 10/629,409
Filed : July 29, 2003

Having two separate bellows allows greater flexibility for the operator to provide air to a patient as the operator can selectively choose which bellows to depress and can also increase the amount of airflow by depressing both bellows. Absent any teaching in the art of record that suggests the desirability of having two separate bellows, the Applicant submits that this provides an independent grounds for the patentability of Claim 22.

SUMMARY

Based upon the foregoing, the Applicant submits that Claims 1, 12 and 22 are allowable over the art of record. The applicant further believes that the remaining claims define additional patentable subject matter and are further allowable due to their respective dependencies on Claims 1, 12 and 22. Hence, the Applicant believes that the above-captioned application is in condition for allowance and requests the prompt allowance of the same. Should there be any impediment to the prompt allowance of this application that could be resolved by a telephone conference, the Examiner is respectfully requested to call the undersigned at the number shown below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 6/26/06

By: 

Michael H. Trenholm
Registration No. 37,743
Attorney of Record
Customer No. 20,995
(951) 781-9231